To: Jones, Bruced[Jones.Bruced@epa.gov]; Doster, Brian[Doster.Brian@epa.gov]
From: Conrad, Daniel
Sent: Thur 1/4/2018 4:02:29 PM
Subject: RE: Louisiana Offshore Oil Port (LOOP) - Oil Bi-Directional Proposal - legal analysis needed
lng_regulatory_roadmap.pdf
mou-23.pdf
20040405.pdf

Bruce,

Just so I understand what the main points here, the issue with LOOP's legal memo is not actually with any of the analysis/history therein, but, rather, that it starts out, and is predicated upon, the assumption that LOOP's operations are by definition an "OCS source". Were this true, the rest of LOOP's assertions in regards to EPA authority west of 87.5 degrees longitude etc. would be relevant. However, if it is not an "OCS source", but instead a Deepwater Port, then the entire analysis is meaningless.

You've already identified the definition of deepwater port (33 USC 1502(9)(A)) which appears it would include an LNG export facility. If so, then 33 USC 1518(a)(1) would make the CAA applicable (there does not appear to be anything similar to the west of 87.5 degrees carve out in the deepwater ports act). I've attached a few documents outlining EPA authority in this area (see page 4 of the MOU). In addition, the OCS page on EPA's website explicitly states the following:

OCS sources are typically involved in oil and gas exploration, development, or production or offshore wind farm installation**, and do not include Deepwater Ports involved in liquefied natural gas (LNG) import and export.** Information on Deepwater Port permitting can be found in EPA's *LNG Regulatory Roadmap* and by contacting your respective EPA Region.

(see regulatory roadmap attached, link doesn't work)

One question I'd have is that the MARAD email below states "that LOOP maintains full compliance with the provisions of its deepwater port license" and refers to LOOPs operations as a deepwater port facility. Your email below states that the "facility has submitted an application expand the facility for the exporting of LNG". Were they already exporting LNG and just expanding operations? If not, what other operations occur at the facility. If it is exclusively an LNG export facility then it certainly is curious why they would not have previously had an air permit. Let me know if this seems to capture the issue, thanks.

-Dan

Daniel H. Conrad

U.S. Environmental Protection Agency

Office of General Counsel

Air and Radiation Law Office

(202) 564-0903

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From: Jones, Bruced
Sent: Wednesday, January 03, 2018 12:28 PM
To: Doster, Brian <Doster.Brian@epa.gov>
Cc: Conrad, Daniel <conrad.daniel@epa.gov>
Subject: RE: Louisiana Offshore Oil Port (LOOP) - Oil Bi-Directional Proposal - legal analysis needed

I do not have much experience with this area either . This is my current thinking. This is a deepwater port facility. I spent some time doing research and reading the various Acts involved. The short answer is the Attached Loop legal opinion is wrong. CAA 328 applies to Outer Continental Shelf "sources." An OCS source is defined as one engaged in the exploration and production of petroleum, natural gas and other minerals. The definition in DeepWater Port Act for a port is a fixed or floating structure used for the transportation, storage, or further handling of oil or natural gas including from the outer continental shelf. Section 328 of the CAA does not cover/mention DWPs. I have looked through our Regional files and it does not appear that this exact issue has come up before.

This facility has submitted an application expand the facility for the exporting of LNG. This this facility has a NPDES permit that is up for renewal, for reasons that are not clear, they do not have an air permit but they will need one if the above quick analysis is correct. I know we have other DW ports and they have air permits issues by EPA. Since so many folks here are out I have having trouble getting more information. I will forward you some additional emails.

Bruce,

Elliott has forward this to me. I am now the ARLO practice group leader covering OCS and Deepwater Ports Act, and Dan Conrad is the ARLO attorney now covering these areas. Neither of us has a lot of experience with DPA, so we may not be able to address DPA questions off the top of our head.

The attached legal opinion on section 328 jurisdiction appears pretty straightforward. Is the issue here that EPA thinks the DPA applies separate and apart from CAA 328 and OCSLA? Is this an existing facility that may have prior approvals under DPA?

Brian

From: Zenick, Elliott
Sent: Wednesday, January 03, 2018 8:21 AM
To: Doster, Brian <Doster.Brian@epa.gov>
Subject: FW: Louisiana Offshore Oil Port (LOOP) - Oil Bi-Directional Proposal - legal analysis needed
Importance: High

I am assuming that this is with you now.

From: Jones, Bruced
Sent: Tuesday, January 02, 2018 6:20 PM
To: Zenick, Elliott <Zenick.Elliott@epa.gov>
Subject: FW: Louisiana Offshore Oil Port (LOOP) - Oil Bi-Directional Proposal - legal analysis needed
Importance: High

Who is doing Deepwater Port Act air work these day in OGC. We have an issue to discussion, see the attached legal opinion.

From: Lawrence, Rob
Sent: Monday, December 18, 2017 3:37 PM
To: Smith, Suzanne <Smith.Suzanne@epa.gov>; Jones, Bruced <Jones.Bruced@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Alvarado, Tina <Alvarado.Tina@epa.gov>; Gillespie, David <Gillespie.David@epa.gov>
Cc: Robinson, Jeffrey <Robinson.Jeffrey@epa.gov>; Magee, Melanie <Magee.Melanie@epa.gov>; Larsen, Brent <Larsen.Brent@epa.gov>; Okpala, Maria <Okpala.Maria@epa.gov>; Houston, Robert <Houston.Robert@epa.gov>; Hayden, Keith <Hayden.Keith@epa.gov>; Dwyer, Stacey <Dwyer.Stacey@epa.gov>; Donaldson, Guy <Donaldson.Guy@epa.gov>
Subject: FW: Louisiana Offshore Oil Port (LOOP) - Oil Bi-Directional Proposal - legal analysis needed
Importance: High

Several of these issues are directly related to how EPA Region 6 has regulated Deepwater Port Act terminals in the past (LNG import and export). Attached is the LOOP's outside counsel's interpretation that everyone on the last call felt was incorrect.

I am going to ask MARAD for an extension due to the holidays. In order to review the LOOP opinion, you need to read the Deepwater Port Act, Outer Continental Shelf Lands Act, and section 328 of the Clean Air Act. But I'm not sure if an extension is available.

Rob Lawrence

Region 6

Policy Advisor - Energy Issues

214.665.6580

From: Fields, Yvette (MARAD) [mailto:Yvette.Fields@dot.gov]
Sent: Monday, December 18, 2017 3:17 PM
To: Borland, Curtis <Curtis.E.Borland@uscg.mil>; Morefield, Wade (MARAD) <wade.morefield@dot.gov>; terri.thomas@boem.gov; t.j.broussard@bsee.gov; Jarvis Abbott <Jarvis.Abbott@bsee.gov>; Lawrence, Rob <Lawrence.Rob@epa.gov>; Robinson, Jeffrey <Robinson.Jeffrey@epa.gov>; michael.tucker@noaa.gov; Giordano, Alfred (PHMSA) <alfred.giordano@dot.gov>; Massimi, Elizabeth L CDR <Elizabeth.L.Massimi@uscg.mil>; Youde, Steven M LCDR <Steven.M.Youde@uscg.mil>; Bachman, Roddy C CIV <Roddy.C.Bachman@uscg.mil>; McKitrick, Bradley CIV <Bradley.K.McKitrick@uscg.mil>; Perez, Jose A CDR <Jose.A.Perez3@uscg.mil>; Perera, Melissa E CIV <Melissa.E.Perera@uscg.mil>; Tone, Kevin P CIV <Kevin.P.Tone@uscg.mil>; Threet, Daron (MARAD) <daron.threet@dot.gov>; Vasanth, Pavagada N CIV

<Pavagada.N.Vasanth@uscg.mil>; Pucci, Michael (MARAD) <Michael.Pucci@dot.gov>; Shepherd II, Thomas (MARAD) <thomas.shepherd@dot.gov>; Gilson, Kristine (MARAD) <kristine.gilson@dot.gov>; Brand, Lauren (MARAD) <lauren.brand@dot.gov>; Carter, Michael (MARAD) <Michael.Carter@dot.gov>; Brennan, Bernadette (MARAD) <bernadette.brennan@dot.gov>
Subject: RE: Louisiana Offshore Oil Port (LOOP) - Oil Bi-Directional Proposal

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PRE-DECISIONAL; DO NOT RELEASE UNDER FOIA

Dear Agency Representatives,

This is a follow-up to the interagency call on December 7, 2017, regarding the pending LOOP Oil Bi-Directional proposal.

During the call, several agency representatives raised significant concerns regarding:

1. The sufficiency of the Environmental Assessment submitted with LOOP's proposal to U.S. Coast Guard in November 2017;
2. The incomplete listing of Federal and State permits required for the current operation of the LOOP facility;
3. LOOP's assertion that it is not required to obtain a permit for air emissions from its marine terminal under Title V of the Clean Air Act and that LOOP's operations at its offshore facility are regulated under the Department of Interior's Outer Continental Shelf air quality program;
4. The ongoing dispute over environmental monitoring requirements at outfalls regulated pursuant to LOOP's NPDES permit;
5. LOOP's lack of notice of the proposed oil export operational changes to the regulatory agencies under LOOP's current permits;
6. PHMSA's outstanding requests for information to LOOP pertaining to pipeline modification and surge protection necessary for the Oil Export proposal; and
7. Obligations regarding any threatened or endangered species and/or marine mammals in the area of LOOP's facility.

Please be advised that the Maritime Administration is conducting due diligence to ensure that LOOP maintains full compliance with the provisions of its deepwater port license for the operation of its facility. As such, MARAD hereby requests written confirmation from each of your agencies on the status of all Federal permits your respective agencies require for onshore and offshore operations of LOOP's deepwater port facility, and any obligations under the Endangered Species Act or Marine Mammal Protection Act in regard to LOOP's current operations and its pending Oil Bi-Directional proposal.

We ask that your responses include the relevant authorizing law(s) for which your agency maintains jurisdiction, the dates of permit issuance and expiration, and the status of any related pending permitting actions. For this purpose, attached is a chart for you to complete and return to MARAD for review.

We would greatly appreciate your prompt responses by December 29, 2017.

Should you have any questions or concerns regarding this request, please feel free to contact Ms. Yvette Fields, Director, Office of Deepwater Ports and Port Conveyance at 202-366-0926 or by email at Yvette.fields@dot.gov.

Regards,

Yvette M. Fields

Director, Office of Deepwater Ports and Port Conveyance

U.S. Department of Transportation

Maritime Administration

1200 New Jersey Avenue, SE, W21-310

Washington, DC 20590

(202) 366-0926 (Office)

(202) 366-5123 (Fax)

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PRE-DECISIONAL; DO NOT RELEASE UNDER FOIA

-----Original Appointment-----
From: Borland, Curtis [mailto:Curtis.E.Borland@uscg.mil]
Sent: Tuesday, November 28, 2017 1:33 PM
To: Borland, Curtis; Fields, Yvette (MARAD); Morefield, Wade (MARAD); terri.thomas@boem.gov; t.j.broussard@bsee.gov; Jarvis Abbott; 'Lawrence, Rob'; robinson.jeffrey@epa.gov; michael.tucker@noaa.gov; Giordano, Alfred (PHMSA); Massimi, Elizabeth L CDR; Youde, Steven M LCDR; Bachman, Roddy C CIV; McKitrick, Bradley CIV; Perez, Jose A CDR; Perera, Melissa E CIV; Tone, Kevin P CIV; Vasanth, Pavagada N CIV; Pucci, Michael (MARAD); Shepherd II, Thomas (MARAD); Gilson, Kristine (MARAD)
Cc: Brennan, Bernadette (MARAD)
Subject: Louisiana Offshore Oil Port (LOOP) - Oil Export Proposal
When: Thursday, December 07, 2017 2:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Teleconference

When: Thursday, December 07, 2017 2:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: Teleconference

Note: The GMT offset above does not reflect daylight saving time adjustments.

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Good afternoon All,

Recently, I asked LOOP to provide supplemental information on their main oil line conversion Environmental Impact Assessment. Attached is LOOP's response (with attachments). While I encourage all to review before our call on Thursday, I am particularly interested in EPA's and BSEE/BOEM's view regarding LOOP's conclusion that "EPA has no jurisdiction over the [offshore] terminal or operations which take place there." (See Air Emissions Regulatory Authority Determination.pdf, Page 1 – Summary of Conclusions).

Good afternoon All,

After some sorting out of schedules, it appears we have critical mass to hold a teleconference on the subject issue. Date: Thursday, December 7; Time: 1400 – 1500 Eastern/1300 – 1400 Central.

Attached is my original email with a brief list of agenda items and two attachments: 1) LOOP's Environmental Impact Analysis of the conversion of its main oil line to bi-directional flow, and 2) A LOOP prepared project description. Both documents should be considered to contain business confidential information and not be sent to other parties outside of your Agency. Determinations of releasability will be made by the Coast Guard in consultation with LOOP. Please feel free to forward this invitation to others in your Agency who may have an interest.

Call-in information: (202) 475-4000

Passcode: 56155997#

I will energize the circuit five minutes before the start time.

All the best,

Curtis Borland

Attorney/Advisor

U.S. Coast Guard Headquarters

Office of Operating & Environmental Standards – Maritime International Law

(202) 372-1444